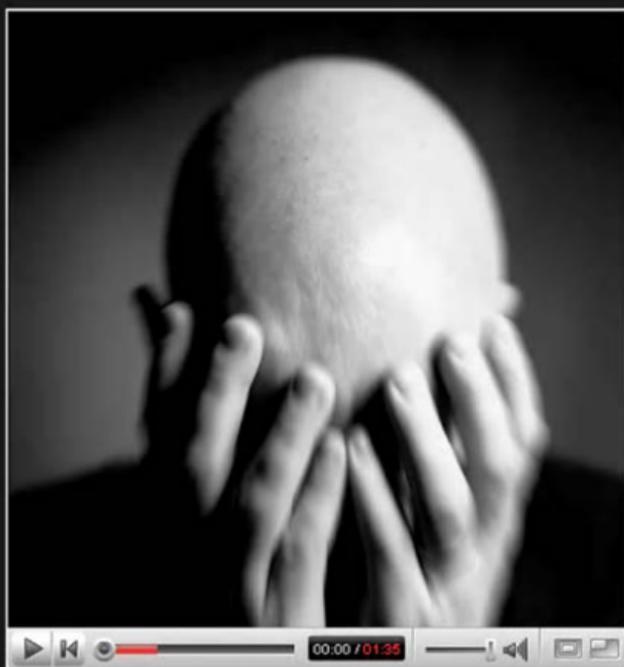


# the future of **reputation**

gossip, rumor, and  
privacy on the internet



**Daniel J. Solove**

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Gossip, Rumor, and  
Privacy on the Internet

**Daniel J. Solove**

Yale University Press  
New Haven and London

## *To Papa Nat*

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## Preface

The idea for this book came to me soon after I began blogging in May 2005. I found blogging to be enthralling and invigorating. I was fascinated by the thrill of expressing my thoughts to a broad audience yet acutely aware of how people could be hurt by gossip and rumors spreading over the Internet.

In an earlier book, *The Digital Person: Technology and Privacy in the Information Age*, I explored how businesses and the government were threatening privacy by collecting massive digital dossiers of information about people. In that book, it was easy to take sides. I argued that information collection and use were threatening people's freedom and well-being, and that greater protection of privacy was necessary. When it comes to gossip and rumor on the Internet, however, the culprit is ourselves. We're invading each other's privacy, and we're also even invading our own privacy by exposures of information we later come to regret. Individual rights are implicated on both sides of the equation. Protecting privacy can come into tension with safeguarding free speech, and I cherish both values. It is this conflict that animates this book.

Although I advance my own positions, my aim isn't to hold them out as end-all solutions. The purpose of the book is to explore in depth a set of fascinating yet very difficult questions and to propose some moderate compromises in the clash between privacy and free speech. There are no easy answers, but the issues are important, and I believe that it is essential that we wrestle with them.

Many people helped shape the ideas in this book through conversations and helpful comments on the manuscript: danah boyd, Bruce Boyden, Deven Desai, Tom Dienes, Howard Erichson, Henry Farrell, Bill Frucht, Eric Goldman, Marcia Hofmann, Chris Hoofnagle, Orin Kerr, Ray Ku, David Lat, Jennie Meade, Frank Pasquale, Neil Richards, Paul Schwartz, Michael Sullivan, Bob Tuttle, Christopher Wolf, and David Wolitz. My research assistants, James Murphy and Erica Ruddy, provided helpful research and proofreading. A few passages in this book were adapted from my article "The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure," 53 *Duke Law Journal* 967 (2003). My agent, Susan Schulman, believed in this book from the start and helped tremendously in bringing it to fruition. I would also like to thank Michael O'Malley at Yale University Press, who also believed in this project and gave me the opportunity to bring it to life, and Dan Heaton, for his thoughtful editing of the manuscript.

When quoting from blog posts, I have occasionally corrected obvious typos and spelling errors.

## Chapter 3 Gossip and the Virtues of Knowing Less

### LET'S TALK ABOUT SEX

Robert was an attorney employed by a U.S. senator. He had a slight crush on Jessica Cutler, a twenty-five-year-old staff assistant to the senator who had begun working there in February 2004. Robert had briefly met Jessica early on when Jessica began working, but he rarely had contact with her since he worked in a different part of the office.

Jessica had recently moved to Washington from New York. Slender and attractive, Jessica was part Korean, part Caucasian. When she moved to D.C., she first lived with her boyfriend, but she grew bored with him and began to cheat on him. They broke up, and she moved out into her own apartment.<sup>1</sup>

On Thursday, May 6, a coworker told Jessica that Robert liked her and invited them both out for drinks at Union Station after work. Unbeknownst to Robert, Jessica had created a blog the day before, called *The Washingtonienne*, which was written in the style of a Washington “Sex in the City” column. The blog began like this:

WEDNESDAY, MAY 05, 2004

I have a “glamour job” on the Hill. That is, I could not care less about gov or politics, but working for a Senator looks good on my resume. And these marble hallways are such great places for meeting boys and showing off my outfits.

POSTED BY THE WASHINGTONIENNE AT 5:32 PM

According to Jessica, she created her blog to keep a few of her friends informed about her escapades. She didn’t set up the blog so that only people with a password could read it because she thought it would be “too much trouble for my friends to have to type in a password.”<sup>2</sup> She stated that she believed that her blog would be a needle in the electronic haystack of cyberspace.

On her blog, Jessica described the daily adventures in her life, which consisted of a lot of partying with various men. One of them was her ex-boyfriend, with whom she continued to have sex occasionally. Another was a staffer at a senator’s office where she interned before getting her current job. Jessica was also sleeping with a man she described as a “sugar daddy who wants nothing but anal.” And she was also involved with a married man, the chief of staff at a government agency who was paying her for sex.<sup>3</sup>

Before she left for drinks with Robert and their coworker on Thursday evening, Jessica dashed off a post to her blog. She wrote that Robert was a “new contender for my fair hand” and referred to him by his real initials. Jessica didn’t seem all that excited about the evening, noting that it would be “full of awkward moments.” But apparently the evening went better than Jessica had expected. In a post the next morning, she wrote about their sexual encounters that evening, including the fact that Robert was into spanking.

Robert began a relationship with Jessica. Things were moving fast. They were sleeping together and began seeing each other frequently. Robert wasn’t aware of Jessica’s other sexual exploits, and he had no idea that as their relationship began to develop, Jessica was blogging the intimate details. In one post, Jessica wrote that she and Robert went out for drinks after work and then went back to her place to have sex “every which way.” That evening, Robert reported having heard that she had told a few friends in the office about his interest in spanking. Jessica confessed that she had told a few people, and Robert forgave her but told her to stop talking about it. But although Jessica stopped gossiping about it in the office, she continued to blog about her sex life with Robert. After writing about the fact that he “likes submissive women,” Jessica quipped: “Good, now I can take it easy in bed. Just lay back and watch him do freaky shit.”

Jessica blogged about Robert's difficulty using a condom. "I also learned that he was a cop," she wrote, "so he has scary police shit like handcuffs in his closet. He implied that we would be using them next time, which is intriguing." Jessica also recounted that they were beginning to like each other and mused about the future of their relationship, which was about a week old at the time. She wondered whether there was a future: "But can it go anywhere, i.e., marriage? I don't know. He's Jewish, I'm not. And we have nasty sex like animals, not man and wife."

May 18 was the last day of their relationship. From Jessica's post that morning, it appeared that everything was progressing satisfactorily in her relationship with Robert. They had plans to go out that evening and continue celebrating Jessica's birthday.

But Jessica's blog was about to send everything into a tailspin. That day, the popular blog *Wonkette* linked to Jessica's blog. *Wonkette* is an inside-the-beltway gossip blog started by Ana Marie Cox, "a 31-year-old self-described failed journalist."<sup>4</sup> *Wonkette* is akin to a digital tabloid. The *Village Voice* declared that *Wonkette* "swims in the libidinal current of American politics." The *New York Times* called it "gossipy, raunchy, potty-mouthed." The conservative pundit Michelle Malkin called Cox "profanity-laced and sex-obsessed . . . [a] vain, young, trash-mouthed skank." *Wonkette*'s website proudly displayed these quotations and more. It received tens of thousands of visitors each day.<sup>5</sup>

*Wonkette*'s posting on the morning of May 18 began like this:

A Girl After Our Own Heart (She's So Getting a Book Deal Out of This)

We realize that some of you who follow this link will never come back: Compared to our humble blog, *Washingtonienne* has half the politics and twice the ass-fucking.

Jessica's blog went primetime. When Jessica learned that *Wonkette* had linked to her blog, she quickly deleted it.<sup>6</sup> But it was too late. Tens of thousands of people had read it. Copies of it had already been archived. Robert came into Jessica's office with a printout of her blog, told her the relationship was over, and walked away. A few minutes later, the woman who had set Jessica up with Robert for drinks came into Jessica's office. The woman was furious. She told Jessica that she should leave. Jessica quickly slipped out of the office.

Three days after *Wonkette* had plugged *Washingtonienne*, on May 21, the senator's office put out a press release: "On May 18, 2004, our office became

aware of allegations that an employee had been using Senate resources and work-time to post unsuitable and offensive material to an Internet Weblog. . . . The employee has been terminated.”<sup>7</sup> Being fired was nothing new for Jessica. One of her friends said that “Jessica has been fired from more jobs than anyone I know.”<sup>8</sup> The same day, Wonkette posted an interview with Jessica:

WASHINGTONIENNE SPEAKS!! WONKETTE EXCLUSIVE!! MUST CREDIT WONKETTE!!  
THE WASHINGTONIENNE INTERVIEW!!

Wonkette spoke to Washingtonienne. Her name is Jessica Cutler. . . .

Washingtonienne: Hello? Wonkette? This is the Washingtonienne!

Wonkette: Hi!

Washingtonienne: [Laughs]

Wonkette: You certainly are in good spirits.

Washingtonienne: Oh, this whole thing is so two days ago for me. . . .

Wonkette: . . . Now, first of all, is there anything you want people to know?

Washingtonienne: Uhm . . . I’m not naming names. I’m not ashamed of anything I wrote in the blog. And people are sad if they’re interested in such a low level sex scandal. I wrote the blog not to ruin people’s lives. It was just for the amusement of me and my friends.<sup>9</sup>

The incident was written up in most major newspapers, including the *Washington Post* and the *New York Times*. CNN discussed the story too. And, of course, the tabloids got into the action.

Life was good for Jessica. She was an instant celebrity, and she relished the attention. She went out partying with Ana Marie Cox, and they posed suggestively together in photos which were posted on Wonkette. She did television interviews and posed nude for *Playboy*. In 2005 she wrote a novel, titled *The Washingtonienne*, for which she received a \$300,000 advance. A blurb on the book boasted: “The Capitol Hill aide who scandalized Washington, D.C., with her blog has now written a sharp, steamy, utterly unrepentant novel set against the backdrop of the nation’s capital.” Her novel was based in part on events discussed in the blog. The only drawback to Jessica’s fame was that she had some trouble finding a new job in D.C., so she moved back to New York City. She also started a new blog called Jessica Cutler Online, where she currently blogs about sex, clothes, and partying. Her blog accepts donations. “I need money for slutty clothes and drugs!” Jessica implores.<sup>10</sup>

Life was good for the author of Wonkette, too. Her blog traffic shot up more than threefold, to more than 1.5 million visits in the month of May 2004. MTV asked Ana Marie Cox to help cover the Democratic National

Convention.<sup>11</sup> She later wrote a novel, *Dog Days*, and became a columnist for *Time* magazine and its website.<sup>12</sup>

For Robert, life was not so good. In May 2005 he filed a lawsuit against Jessica, stating:

Cutler caused widespread publication of private intimate facts concerning Plaintiff in a manner that would be deemed outrageous and highly offensive to an ordinary reasonable person of average sensibilities, subjecting Plaintiff to severe emotional distress, humiliation, embarrassment, and anguish. . . .

No reasonable person would want the intimate physical, verbal, emotional, and psychological details of his or her sexual life and romantic relationships life exposed against his or her will on the Internet for the entire world to read. It is one thing to be manipulated and used by a lover, it is another thing to be cruelly exposed to the world.<sup>13</sup>

The complaint was served on Jessica as she was giving a reading from her book at a Washington bookstore.

*Playboy* magazine asked Jessica: “What advice would you give to someone starting a blog?” Jessica replied: “With a blog, you can’t expect your private life to be private anymore. You just never know. But, when you work on the Hill you find out the guy you’ve been sleeping with has told everyone in your office about it. So, what’s the difference? It’s writing on the bathroom wall.”<sup>14</sup>

In another interview, Jessica said that she felt “really bad for the guys. They didn’t deserve this.” But she was enjoying her newfound fame: “Some people with blogs are never going to get famous, and they’ve been doing it for, like, over a year. I feel bad for them.” According to Jessica: “Everyone should have a blog. It’s the most democratic thing ever.”<sup>15</sup>

### **Blogging School**

While Jessica tells tales out of school, other bloggers are telling tales in school. In a development that sends shivers down my spine, students are beginning to blog about their professors. One of my colleagues, the George Washington University law professor Orin Kerr, tells an interesting tale. He’s a blogger at the popular blog *The Volokh Conspiracy*. Here’s what he writes:

#### **WHEN PROFESSORS READ PSEUDONYMOUS STUDENT BLOGS**

This fall, I came across a pseudonymous GW iL student blog, *Idle Grasshopper*. Mr. *Idle Grasshopper* blogged a lot about his professors (appropriately anonymized, but still recognizable to an insider), and I decided to tip off one of

those professors so he could check out what the student was saying about him. That professor is one of GW's best young teachers, and Idle Grasshopper was appropriately wowed by his teaching—and also a bit nervous about getting called on given the professor's demanding Socratic style.

My colleague started to visit the student's blog on occasion to see the student's reaction to class and also to see if he could figure out the student's identity. After visiting the blog on a semi-regular basis for a few months, he was able to piece together the evidence and determine who was Idle Grasshopper. He also realized that he had never called on the student in the course of the entire year (the course was Civ Pro [Civil Procedure], a year-long class). He decided not to call on Mr. Idle Grasshopper until the very last case on the very last day of the semester. And when he did, it was with a very cleverly crafted introduction:

Professor: So, Mr. [ ].

Student: Yes sir.

Professor: You've been sitting back there idle all year, laying low in the grass, but I'd like to put this seating chart in the hopper, so I thought I'd call on you.<sup>16</sup>

Here's what the student blogged about the experience:

PCP called on me today. Yep, I got cold called in CivPro. On the last day. The very last person to be called. But I wasn't just called. Oh no. As you can see from above, PCP called on me in a way that let me (and a few select others that know my semi-secret identity and who were paying attention) know that he knows. About the blog. And about my identity. So I guess that makes this post an "I know that you know" post. . . .

I'm not sure how I feel, knowing as I do now, that PCP has been reading my blog. Part of me is . . . intimidated? . . .

On the other hand, how cool is it that one of the best profs I'll have in law school (if not the best, but I've only had three so far, so the sample size is still too small) takes the time to not only read what I write, but also took the time to call on me in a way that took a tiny bit of effort to craft, while knowing that few, if any, of the class would find it humorous? Pretty freakin' cool.<sup>17</sup>

This incident ended happily, but one doesn't need an active imagination to think of more ominous ways students might blog about their teachers.

### **The Phantom Professor**

What if teachers started blogging about the lives of their students? Actually, it has happened. One adjunct journalism professor was fired from teaching a course at Boston University for posting his thoughts about his first day of



A page from the Phantom Professor blog

teaching. He wrote: “Of my six students, one (the smartest, wouldn’t you know it?) is incredibly hot. . . . It was all I could do to remember the other five students.”<sup>18</sup>

Another instance involved a pseudonymous blogger at Southern Methodist University. The blog, called *The Phantom Professor*, was born in the fall of 2004.

The blog chronicled the daily happenings at SMU in a frank and uninhibited way. It related the stories of students’ campus lives, including their views on having sex, using drugs, dealing with stress, and coping with eating disorders. The mysterious blogger expressed her own opinions about the students, especially rich female students whom she referred to as “the Ashleys.” In one post, for example, she wrote about a student whom she admired:

She’s not one of the Ashleys. She’s a few years older and she’s a minority. She has a husband and a baby. . . .

I have no doubt that, unlike the Ashleys who half-joke about being in college to “earn a Mrs. Degree,” she’ll be heading to grad school and a career in the academy. This young woman is a natural teacher with a real flair for research.

She’s not like them at all. And for this one day, it got to her. Their Prada handbags and their SUVs (brand new, all filled with high octane charged to daddy’s

plastic) and their size o derrieres kept warm with pastel Juicy Couture sweats that show just a hint of dorsal cleavage. She looked around at their perfect skin and their French manicures and it seemed suddenly unfair.<sup>19</sup>

In another post, she wrote about a student who had suffered a mental breakdown. In one instance, The Phantom Professor described a rich student who stopped by her office during office hours:

Kortney calls. I'd dub her one of the Ashleys—those plastic girls tottering on \$500 sandals, clutching their \$1500 handbags—but try as she might, she'll never quite fit the mold. Her weight for one thing. Girls on this particular campus hover at near-skeletal levels. Kortney is on the chunky side.<sup>20</sup>

Although the blogger tried to hide the identities of those whom she spoke about, many people recognized themselves and others. Soon, some had figured out who the blogger was: Elaine Liner, a popular writing instructor. At the conclusion of the 2005 spring semester, she was asked not to return.<sup>21</sup>

Why did she decide to blog about campus life? “I felt I had so many great stories to tell about students,” Liner said, “and this would be a way to start writing them. . . . I just have this compulsion to tell stories. I wanted to write from deep inside, to be the person in the back of the faculty meeting or the person listening to what was going on. I wanted to write about what people don't know about colleges.”<sup>22</sup> In another interview, she explained: “I thought I was just writing funny, odd, touching little stories about my experiences on a campus and in a classroom.”<sup>23</sup>

Some people supported her blogging. One said: “She tells the brutal truth, and I had a lot of emotions. But she's a writer and that's what she does and it should be supported.”<sup>24</sup>

Not everybody is pleased with what Liner wrote about them. In comments to an article in *Inside Higher Ed* describing Liner's blogging adventures, a faculty member at SMU writes:

The physical descriptions were too close for many of our faculty and students to not know who was being discussed. And the rude remarks about a particular person's physical appearance was a kind of statement that can create hostile working environments.<sup>25</sup>

The Phantom Professor also wrote about fellow professors. She described an attractive male professor whom she called Hot Pockets, the efforts of female students to flirt with him, and his efforts to stop it. Another of Liner's

posts described an African-American professor who was prized by the faculty as an up-and-coming star:

Wide load Professor Wideass had what she called her “Jerry Maguire” moment at the departmental faculty meeting yesterday. She’s the newest tenure-tracker, fresh from a mediocre Midwestern university, with a Ph.D. in something no one cares about. She recently was named a “rising academic star” by some obscure journal. . . . Wideass is a well paid full-timer with a secure future at the university and all the health benefits her plaque-laden arteries will ever need. We adjuncts are delighted to have discovered she is widely despised by the undergrads.<sup>26</sup>

Professor “Wideass” wrote in the comments to the article about Liner:

Her comments about my size, my recognition by the Chronicle of Higher Education, my alma-mater, and my values are painful, demeaning, and in all cases false (except I guess her depiction of my size . . .)

Unfortunately, our students, those who are rich, as well as those who are poor, are simply undergraduates with an average age of 19. Many of them are not as well equipped to see their faults, their personal problems or those of their family written about so cavalierly and publicly by someone they trusted.<sup>27</sup>

The Phantom Professor raises a number of difficult questions about blogging. Her blog was a candid account of college life, and she told stories that often remain hidden. Pull back the curtains, and a lot of very interesting things can be revealed. And there are also free speech considerations. Doesn’t Liner have the right to speak freely about things she feels strongly about? Doesn’t she have the right to chronicle the troubling and sometimes unseemly events she witnesses in the lives of college students and professors? According to the author of the *Inside Higher Ed* article: “Rita Kirk, the department chairwoman, says that she received complaints about the blog from students and parents, and that she consulted with university lawyers about what to do about it. Kirk describes herself as a strong First Amendment supporter, but she says she worries that the blog violated students’ privacy rights and upset some students. ‘People need to remember that words can hurt,’ Kirk says.”<sup>28</sup> Words can certainly sting, but what about free speech? Then again, what about privacy? These are the difficult tensions increasingly arising as more people take to the blogosphere.

By way of postscript, after being fired, Elaine took a brief break from blogging and deleted some of the posts. But she then reposted a few of her old postings, and resumed blogging. The Phantom Professor lives on.

## GOSSIP MOVES ONLINE

The mainstream media have ethical rules regarding people's privacy. These rules are flexible and permissive, but they are typically followed by most media entities. One rule is to avoid naming victims of rapes and sexual assaults.<sup>29</sup> But bloggers come in all shapes, sizes, and ethical configurations, and many don't follow any conventional code. There are few limits in the blogosphere. Moreover, the national news media don't talk much about local gossip. The talk at the water cooler about your coworker's extramarital affair often won't be of interest to CNN. But for bloggers, it's prime fodder.

Many blogs are primarily about political issues, current events, or other topics. But a sizable number of blogs consist of people's musings about their lives. People used to tuck their diaries away in drawers or lock them up, but now, they are sharing them with the public on the Internet.

Some people blog anonymously or pseudonymously; others blog in full exposure. According to a survey: "For the most part, respondents identified themselves on their blogs. 81% of participants said they used some form of self-identification: 55% used their real names, 20% used some variant of their names (only a first name, a nickname that friends knew, initials, etc.)."<sup>30</sup>

As for the content of their blogs, 25 percent of bloggers in the survey noted that they frequently posted very personal details on their blogs. According to the survey, bloggers frequently wrote about other people they knew, but 66 percent never asked the permission of these people when they did so; only 3 percent routinely requested permission. Many explicitly identified other people on their blogs (21 percent) but more attempted to avoid identifying others (42 percent). As one blogger explained:

With work-related entries, I'll sometimes use only a first initial [to identify people.] I'm not overly concerned since the people I write about don't know of my blog's existence and aren't particularly net-savvy.<sup>31</sup>

Schools are beginning to grapple with problems emerging from student blogging, a difficult issue since most blogging occurs outside of the schoolhouse doors. In one instance, two pseudonymous high school female students created a blog they called the Underground Newspaper, filled with the school's gossip. The students explained that they were fed up with the official school newspaper because it was too sterile. One of them said: "Everything's so positive when not everything about our school is positive."<sup>32</sup> The blog re-

ceived 2,500 visits per month. But school officials contacted the girls' Internet service provider and had the blog shut down.

Nannies are beginning to blog too. One nanny blogged about the couple she worked for and discussed details about a squabble between them. She also revealed that she sometimes came to work with a hangover. When the couple discovered the blog, they fired her.<sup>33</sup>

One mother was shocked to discover that her thirteen-year old daughter had a blog. The daughter blogged about her life, included a list of her friends, and spiced it up with pictures. The mother also discovered that many of her daughter's friends had blogs too. And she was appalled at the pictures her daughter posted of herself and her friends: "Their pictures are very provocative. There's shots with their butt in the air, with their thongs sticking out of it. They squeeze their elbows together to make their boobs look bigger."<sup>34</sup>

## WEBS OF COMMUNICATIONS

In the past, gossip advanced slowly. We share information within social circles, which have boundaries. Traditionally, it has been unusual for gossip to leap from one social circle to another, because people in one group rarely know or care about someone in a completely different group. A person's coworkers make up one such social circle. Gossip often travels quickly throughout a workplace, since people work in the same building and have frequent encounters with one another. They are interested in information about fellow group members. Therefore, if one of them hears a juicy piece of gossip, he or she is more likely to spread it to other coworkers than to tell someone outside the group. But others outside the workplace might not care anyway. They might find the details of a particular salacious story to be interesting, but unless they know the person involved, they probably don't care at all about that person's identity.

### Social Epidemics and Tipping Points

In *The Tipping Point*, the writer Malcolm Gladwell describes what he refers to as "social epidemics." He writes that the spread of ideas and information resembles the spread of epidemics of diseases. Change doesn't occur gradually but instead arrives at "one dramatic moment," which Gladwell calls a "tipping point." How does this phenomenon occur?

Gladwell explains that within social networks, certain people are "connectors"—gregarious people who exist in numerous different social circles. Sociol-

ogists refer to them as “super nodes,” hubs that link many clusters of people. “Most of us,” Gladwell notes, “don’t have particularly broad and diverse groups of friends.” That’s why connectors are so important. When information hits a connector, it spreads from one social circle to another. It is no longer contained within a particular group of friends but leaps into an entirely different clique. Gladwell gives the example of Paul Revere, whose famous horseback ride rapidly spread the word about the arrival of the British troops. Revere created a “word-of-mouth epidemic,” spreading the news over “a long distance in a very short time, mobilizing an entire region to arms.” Revere’s ride was so successful because Revere knew tons of people from different social circles.<sup>35</sup>

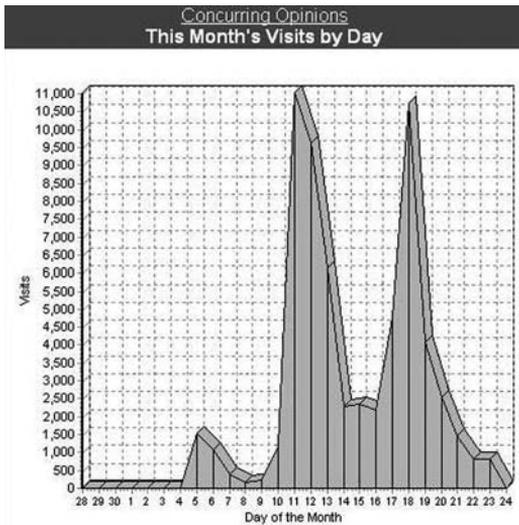
As information spreads to greater numbers of people, it begins to proliferate exponentially. This process doesn’t occur readily. A piece of information must be “sticky”—that is, it must inspire people to keep talking about it. The information, in other words, must be “contagious.”<sup>36</sup> When this process occurs, the spread of the gossip might reach a “tipping point,” where communication boils over into an epidemic, and a rumor can spread to thousands of people.

## Linking

The Internet develops by building electronic connections. For bloggers to attract readers, they need to get referrals from popular websites. When other bloggers find a post interesting, they will link to it. A “link” is a hyperlink, text that whisks you at a click to another webpage. The Web is interlaced with links, a giant latticework of connections between websites, where Internet traffic fires like synapses in a gigantic brain.

While most blogs languish in obscurity, tucked away in the shadows of cyberspace, some blogs are becoming powerful rivals to the mainstream media. Some of these blogs have tremendous audiences—tens of thousands of visitors per day, hundreds of thousands, even millions, per month. When a link to a blog post or website appears on one of these websites, thousands of people will click on the link and read the post or site.

On *Concurring Opinions*, <http://www.concurringopinions.com>, where I blog with a group of law professors, we have a “site meter” that monitors our readership. It measures how many times our blog is visited throughout the day; what posts people read; and what websites are referring readers to our blog. The chart below displays the number of visits to our blog each day over the span of a month. Notice the big spikes—these are due to links from other blogs with big readerships.



Site meter graph for the Concurring Opinions blog

An interesting post can very quickly gather attention in the blogosphere. People on the Internet often act like locusts, swarming toward the latest interesting piece of data that attracts a buzz. One of the most popular blogs is called Slashdot, which provides technology news. When Slashdot links to a website, it generates so much traffic that it can cause the website to crash due to an overload of visitors. It's like having a stampede to your website. There's even a term for it—it's called getting "slashdotted."

### Gossip by Ear, Gossip by Electrons

In the offline world, rarely does gossip hit a tipping point. The process of spreading information to new people takes time, and friends often associate in similar circles, so most secrets don't spread too widely.

The Internet takes this phenomenon and puts it on steroids. People can communicate with tens of thousands—even millions—of people almost simultaneously. If you put something up on the Internet, countless people can access it at the same time. In an instant, information can speed across the globe.

Of course, the Web is gargantuan, and much gossip that finds its way online remains a needle in an enormous haystack of data. The "real issue," however, the network theorist Albert-László Barabási notes in his book *Linked*, "isn't the overall size of the Web. It's the distance between any two documents. How many clicks does it take to get from the home page of a high-

school student in Omaha to the Webpage of a Boston stockbroker?" The answer: not too many—about nineteen clicks on average.<sup>37</sup>

But nineteen clicks is still a lot of clicks. Gossip might find its way onto the Internet, but it still might not spread widely. Imagine the small-time blogger, who has just a few friends reading her blog. She blogs about something really interesting. One of the friends might tip off a blogger at a popular blog—or that blogger might just stumble upon the story. Either way, the blogger at the popular blog might decide to blog about the information and link to it. Suppose that the popular blog gets millions of readers a week. Now the information is widely disseminated—in almost an instant. To use Gladwell's term, the popular blog is a "connector." But it isn't just a normal connector—it is a superconnector, one that can spread information much more widely and quickly than a hundred Paul Reveres.

But it doesn't end there. Many of the popular blog's readers have blogs themselves, and they blog about the story. Their readers start discussing it and blogging about it. And so on. On the Internet, gossip can more readily jump the boundaries of various social circles, because all it takes is for the gossip to come to the attention of a connector blog, where it can become contagious and spread far and wide throughout cyberspace.

## IS GOSSIP GOOD?

Gossip is often thought of as unseemly, but it has both good and bad qualities. As the philosopher Aaron Ben Ze'ev observes, "Gossip is engaged in for pleasure, not for the purpose of hurting someone." He notes that most damage from gossip is minor. Gossip, Ben Ze'ev concludes, isn't "virtuous" but it is not "vicious" either.<sup>38</sup> Indeed, much gossip isn't malicious, and it is something that most of us engage in. Although people quickly denounce gossip, it remains ubiquitous.<sup>39</sup> According to one study, about two-thirds of all conversations involve gossip, and as one writer sums it up, "What people talk about is mostly other people."<sup>40</sup>

In countless societies, whether primitive or modern, gossip generally functions in similar ways.<sup>41</sup> Gossip is essential to establishing reputations. According to the psychologist Nicholas Emler: "Gossip does not merely disseminate reputational information but is the very process whereby reputations are decided. Reputations do not exist except in the conversations that people have about one another."<sup>42</sup> Gossip is a way to expose people's infringements of norms, and it is an essential tool for a community to ensure that its norms are respected.

Gossip helps shape people's reputations without confrontation. The anthropologist Karen Brison notes that because it often takes place behind a person's back, "gossip allows people to assess their neighbors and criticize digressions [from norms] without starting fights and breaching surface amity."<sup>43</sup> In other words, gossip can help enforce norms in a way that eases social tension and confrontation.

The legal scholar Diane Zimmerman argues that gossip teaches us a lot about society and human behavior: "By providing people with a way to learn about social groups to which they do not belong, gossip increases intimacy and a sense of community among disparate individuals and groups." For Zimmerman, "gossip is a basic form of information exchange that teaches about other lifestyles and attitudes, and through which community values are changed or reinforced."<sup>44</sup> We can learn a lot when we rip off the veil and peer into people's private lives.

In some instances, disclosing a person's secrets helps change certain social norms. Some norms persist even though many people violate them in the shadows. When this behavior is brought into the limelight, society will be forced to confront this norm more directly and realize just how often it is being violated. Society's hypocrisy will be revealed, and this might spark a change in the norm.<sup>45</sup>

Although gossip can help shape reputations, educate us about the lives of others, and stimulate the evolution of norms, it has some other qualities that are less savory. "People are careless when they gossip," Brison observes, "because they know they will not have to take responsibility for their words. This means that rumor spreads easily and the truth is distorted."<sup>46</sup> As the philosopher Martin Heidegger noted, gossip "spreads in wider circles and takes on an authoritative character. Things are so because one says so. Idle talk is constituted in this gossiping and passing the word along, a process by which its initial lack of grounds to stand on increases to complete groundlessness."<sup>47</sup> In other words, the problem with gossip is that it is based on unsubstantiated rumors, and people often don't bother to learn the full story. For Heidegger, gossip is a superficial way of learning information about others. It doesn't involve a serious attempt to understand another person but often remains shallow and careless. People rarely use gossip as a way to delve into the psychological depths of others, but rather consume it like a form of greasy fast food. Gossip is a delicious treat, often without much nutritional value. It certainly can inform us about the lives of others, but much gossip merely titillates without teaching. Gossip is rarely a dose of pure truth; it is often intermixed

with fiction. The literature professor Patricia Meyer Spacks astutely notes that gossip “plays with reputation, circulating truths and half-truths and falsehoods about the activities, sometimes about the motives and feelings, of others.”<sup>48</sup>

Although sociologists often point out that gossip is essential for social control, people often gossip in ways that don’t benefit society but that instead further their own self-interest. According to Brison, “When people gossip they are less interested in preserving social order than in advancing their own political fortunes and slandering their rivals.”<sup>49</sup> Gossip can thus function as a weapon to wound others without providing any significant contribution to the community.

With respect to norms, gossip works in two directions—it can undermine norms, but it can also affirm them. “On the one hand,” the legal scholar Robert Post observes, “gossip threatens to subvert community norms by exposing back-stage behavior and revealing the pretensions, faults, peccadillos, and scandal of community actors. On the other hand, gossip reaffirms community norms by bringing social pressure to bear on their enforcement.”<sup>50</sup> According to the law professor Paul Schwartz, revealing people’s norm violations will not always effectively change norms.<sup>51</sup> The number of people whose secrets are outed is often insufficient to force a change in norms. Perhaps if the veils on our lives were all removed simultaneously, society might collectively discard certain norms. However, the process of changing norms is complicated, and it is far from certain that more gossip will effectuate change in norms. Those who seek to challenge norms they dislike by gossiping about transgressors may instead increase the oppressiveness of the norms without doing much to eradicate them. Disclosing personal secrets can create an atmosphere of coercion, blackmail, and witch hunts.<sup>52</sup>

In the end, we’re ambivalent about gossip. Sometimes gossip is quite beneficial; sometimes it is harmless; but other times, gossip is quite malignant. Regardless of gossip’s vices, we would be foolish to imagine that we can ever hush its mischievous whispers. The more meaningful question is not whether we should stop gossip, but how we should control it, how we should modulate its problematic effects.

#### WHEN LESS IS MORE

Some argue that the availability of more private information about people is a good thing. Indeed, the mantras of the Information Age are that “infor-

mation wants to be free” and that “more information is always better.” We need information about people to make judgments about them. The judge and legal scholar Richard Posner believes that people shouldn’t be able to hide discreditable facts about themselves. According to Posner: “Prying enables one to form a more accurate picture of a friend or colleague, and the knowledge gained is useful in social or professional dealings with him.” Posner argues that people often want to hide harmful facts about themselves for their own gain, a practice that is similar to a merchant concealing defects in a product.<sup>53</sup>

We need information about people to determine whether to trust them. We place our safety in the hands of others. We entrust others with our finances, our deepest secrets, and the care of our children. But establishing trust is hard these days because many people live in large communities with highly mobile populations.<sup>54</sup> Our neighbors are often strangers. Privacy inhibits the establishment of trust because privacy “makes it difficult to know others’ reputations,” and knowing reputations is a prerequisite to trusting strangers.<sup>55</sup>

Although the conventional wisdom of the Information Age is that more information is better than less, sometimes we’re better off not biting into the bitter apple of others’ private lives. Many believe that learning private information about other people will improve our understanding of them and enhance the accuracy of our judgments. But more information may not necessarily lead to more accurate judgments about others. In many cases, the disclosure of private information can lead to misjudgment based on only partial knowledge of someone else’s situation.

### **Judging Out of Context**

Judge Posner claims that a person concealing discreditable private information is tantamount to a merchant concealing defects in a product. However, the truth about a person is much more difficult to ascertain than the truth about a product or thing. People are far more complex than products. Knowing certain information can distort judgment of another person rather than increase its accuracy.

We are constantly judging other people, and we often must do so quickly. The law professor Jeffrey Rosen astutely points out that people have short attention spans and will probably not judge other people fairly: “When intimate personal information circulates among a small group of people who know us well, its significance can be weighed against other aspects of our personality

and character. By contrast, when intimate information is removed from its original context and revealed to strangers, we are vulnerable to being misjudged on the basis of our most embarrassing, and therefore most memorable, tastes and preferences.”<sup>56</sup>

People often condemn others on partial information. Indeed, necessity sometimes demands hasty judgment. We frequently don’t have enough time to know the whole story. A short story called “The Last Judgment” by the Czech author Karel Čapek best captures the issue. A deceased criminal confronts a divine tribunal to determine whether he will be sent to heaven or hell. The tribunal consists of human judges. God, instead of his usual role as judge, is the witness. God testifies about the defendant’s crimes but explains the causes of the defendant’s behavior and declares that, under different circumstances, the defendant would have been an upstanding citizen. Nevertheless, the judges condemn the defendant to hell. Before facing his fate, the defendant asks why God has not decided his fate: “Because I know everything. If judges knew everything, absolutely everything, they couldn’t judge either: they would understand everything and their hearts would ache. How could I possibly judge you? Judges know only about your crimes but I know everything about you. . . . And that’s why I cannot judge you.”<sup>57</sup>

The story nicely illustrates the difference between human and divine judgment. Human judgment is imperfect; we make judgments based on fragments of information taken out of context. If we knew everything, we might find it hard to judge others at all. Because human judgment is bound to be incomplete and flawed, we should approach it with humility. Our knowledge of other people is riddled with gaps. The novelist and essayist William Gass, writing about literature, observes: “Characters in fiction are mostly empty canvas. I have known many who have passed through their stories without noses, or heads to hold them; others have lacked bodies altogether, exercised no natural functions, possessed some thoughts, a few emotions, but no psychologies, and apparently made love without the necessary organs.”<sup>58</sup>

Similarly, our knowledge of other people is often “empty canvas.” There’s a lot we don’t know about our coworkers, our friends, and even our family members. When we discover new information about people, we can fill in the canvas, but we still often have only partial understanding. It is easy to leap to conclusions prematurely. Although more information about a person might help enrich our understanding of that person, it might also lead us astray, since we often lack the whole story.

### The Complicated Self

William James, a philosopher and pioneer in psychology, observed that people often show different sides of themselves in different contexts: “Many a youth who is demure enough before his parents and teachers, swears and swaggers like a pirate among his ‘tough’ young friends.” Moreover, James explained, “we do not show ourselves to our children as to our club-companions, to our customers as to the laborers we employ, to our own masters and employers as to our intimate friends. From this there results what practically is a division of the man into several selves.”<sup>59</sup>

The sociologist Erving Goffman advanced a similar notion of selfhood. He remarked that we live our lives as performers; we play many different roles and wear many different masks.<sup>60</sup> For example, parents present themselves as role models to their children, and society deems it quite appropriate for parents to portray themselves in this idealized manner. Each role enables us to display different aspects of ourselves. People even play roles in which they seem improperly cast, hoping to grow into the part. One plays a role until it fits, becoming transformed in the process. The self is always growing and developing; it isn’t fixed in one place.

Countless psychological studies indicate that we behave very differently when in public than when in private.<sup>61</sup> As the novelist Milan Kundera observes, “Any man who was the same in both public and intimate life would be a monster. He would be without spontaneity in his private life and without responsibility in his public life.”<sup>62</sup> In our public roles, we often strive to meet the expectations of others.<sup>63</sup> We groom and clothe ourselves before emerging in public. We are often more careful in our behavior, for we are concerned about the impressions we create. In private roles, we express aspects of ourselves that are often inappropriate in public roles.<sup>64</sup> We’re more relaxed and at ease. As Kundera notes: “In private, a person says all sorts of things, slurs friends, uses coarse language, acts silly, tells dirty jokes, repeats himself, makes a companion laugh by shocking him with outrageous talk, floats heretical ideas he’d never admit to in public, and so forth.”<sup>65</sup>

There’s a popular myth that the public self isn’t as genuine as the private self. People’s true colors come through in private, when they’re offstage. In the words of MTV’s reality television show *The Real World*, people “stop being polite and start being real.” But the private self wasn’t always thought of as more genuine. Indeed, according to the philosopher Hannah Arendt, to the ancient Greeks public life was more representative of one’s authentic self than life in private.<sup>66</sup>

Neither the public nor private self represents the “true” self. We’re too complex for that. Our public and private sides are just dimensions in a complex, multifaceted personality, one that is shaped by the roles we play. We express different aspects of our personalities in different relationships and contexts. The psychiatry professor Arnold Ludwig debunks the myth that the self displayed in private is more genuine than the self exhibited in public: “Each self is as real to the person experiencing it and as much the product of natural forces as the other. All that the distinction between a true and a false self signifies is a value judgment.”<sup>67</sup> As a result, uncovering secrets will not necessarily reveal who people “truly” are or enable more accurate assessments of their character. Instead, these disclosures can often be jarring, for they display people out of the context in which others may know them.

Revealing private facts when first getting to know a person can be even more distorting. According to Goffman, people need time to establish relationships before revealing secrets.<sup>68</sup> Immediate honesty can be costly. When we first meet somebody, we have little invested in that person. We haven’t built any bonds of friendship or developed any feelings for that person. So if we learn about a piece of that person’s private life that seems bizarre or unpleasant, it’s easy to just walk away. But we don’t just walk away from people we know well. With time to gain familiarity with a person, we’re better able to process information, see the whole person, and weigh secrets in context.<sup>69</sup>

Does the awareness that we play different roles in different contexts mean that we should actively promote this behavior through privacy protection? Who trusts people who are too chameleon-like, radically changing their personalities in every situation? Although too much dissonance may be troublesome, Arnold Ludwig argues that “when you play various roles you’re not necessarily being artificial or phony. These roles let you accentuate different aspects of yourself.”<sup>70</sup> Society has come to accept the fact that there is dissonance between public and private selves. For example, people not only accept the telling of white lies but even deem them necessary in many contexts. As the philosopher Thomas Nagel notes: “One of the remarkable effects of a smoothly fitting public surface is that it protects one from the sense of exposure without having to be in any way dishonest or deceptive, just as clothing does not conceal the fact that one is naked underneath.”<sup>71</sup>

Nagel’s observation suggests a key point—society recognizes and accepts the fact that the public self is a partly fictional construct. The public self is constructed according to social norms about what is appropriate to expose in public. People may even feel uncomfortable when other people reveal “too

much information” about themselves. In short, society expects the public self to be more buttoned-up than the private self.

### **The Trouble with Irrational—and Rational—Judgment**

Besides judging based on partial information, people are also prone to making irrational judgments. Certain traits and conditions carry great stigma, which is often the result of incorrect assumptions and faulty knowledge. According to Goffman, stigma is “an attribute that is deeply discrediting.” Certain stigmatic facts about a person include addiction, alcoholism, suicide attempts, mental disorders, unemployment, and illiteracy. People with stigma are often shunned or not fully accepted by society. Stigma can spread to family members, as when a child feels stigmatized by a parent’s criminal past.<sup>72</sup>

People protect certain secrets because disclosure might lead to stereotyping and discrimination toward them and their families. For much of history, there were widespread beliefs that people who contracted particular diseases did so because of their character flaws. Even education has a difficult time cleansing stigma. People used to believe that the disease cholera was caused by sin. Later on, the cause of cholera was discovered to be poor sanitation. But even after this discovery, during the cholera epidemic of 1866, people still clung to the belief that the disease was “the scourge of the sinful.” People with noninfectious illnesses, such as cancer, still find themselves shunned by friends and family. Susan Sontag contends: “Nothing is more punitive than to give a disease meaning—that meaning being invariably a moralistic one. Any important disease whose causality is murky, and for which treatment is ineffectual, tends to be awash in significance. First, the subjects of deepest dread (corruption, decay, pollution, anomie, weakness) are identified with the disease. The disease itself becomes a metaphor.”<sup>73</sup>

Furthermore, the disclosure that people have certain diseases engenders assumptions. Discovery that a person has AIDS often results in speculation that the person has engaged in drug use, promiscuous sex, or homosexual sex.<sup>74</sup>

Several surveys reveal that many employers have incorrect views of cancer’s effects and treatment, and cancer patients lose their jobs five times more frequently than employees without cancer.<sup>75</sup> Irrational judgments have existed throughout history and continue to exist. Even in the face of high costs, employers continue to engage in racial and other forms of discrimination. Market pressure cannot always rectify strongly held beliefs or subconscious prejudices.<sup>76</sup>

Not all judgments made based on people's personal information, however, are irrational. Suppose a person has a genetic predisposition to develop cancer. An employer might rationally decide not to hire that person, instead opting to hire another person with similar qualifications. The employer might reason that if the person at risk for developing cancer did, in fact, develop the disease, then he or she would miss many workdays. But even if it's rational for an employer to refuse to hire a worker because of a genetic condition, society should not necessarily condone that choice. And beyond genetic data, there is a lot of information—such as an employee's off-hours activities—to which society does not believe employers should be entitled, even when relevant to job performance.<sup>77</sup>

### Freedom from Society's Oppressive Glare

In 1996 Jennifer Ringley, a twenty-year old student, set up a Web camera in her dorm room to broadcast an ongoing video of her life over the Internet on a website called JenniCam. The camera was always on, capturing her in the nude, masturbating, and having sex. Most of the time it captured the mundane, such as her writing, reading, or doing daily chores. During the time while JenniCam was running, a scandal erupted when Jennifer had sex with her friend's fiancé. Her friend found out about it from watching JenniCam. Jennifer's website became immensely popular, at one point receiving more than a million visits per day. Mainstream media began to pay attention too, and she made it onto the David Letterman show. According to Ringley: "I keep Jennicam alive not because I want or need to be watched, but because I simply don't mind being watched."<sup>78</sup> JenniCam moved to Jennifer's home when she left college. She kept it going for seven years, officially ending it in the beginning of the year 2004.

Most of us, I bet, would not want to live like Jennifer Ringley. Few people can live in front of the camera like Jennifer without feeling inhibited and self-conscious about everything they do. Privacy gives people space to be free from the scrutiny of society. The sociologist Alan Westin observes that privacy protects "minor non-compliance with social norms."<sup>79</sup> Many norms are routinely broken, and privacy permits society to ignore these small transgressions. Protecting privacy often means that we allow people to violate social norms without getting caught or punished for it, without having their peccadillos ascribed to their reputations. The sociologist Amitai Etzioni views privacy as a "realm" where people "can legitimately act without disclosure and accountability to others."<sup>80</sup>

Why do we want to allow people to transgress in private and get away with it? Why do we want to foster situations where people are not accountable for their actions? Some view privacy as protecting the individual at the expense of society. According to the law professor Fred Cate, “privacy may be seen as an antisocial construct. It recognizes the right of the individual, as opposed to anyone else, to determine what he will reveal about himself.”<sup>81</sup> However, privacy need not be understood as something that thwarts social norms. Robert Post notes that privacy protects “rules of civility” that shape life in the community.<sup>82</sup> We have social norms about respect for each other, and from these norms privacy emerges.<sup>83</sup> Thus privacy doesn’t just allow people to flout norms; privacy itself is a set of norms about how intrusive we should be into each other’s lives. Just as it is rude to bump into people or crowd their space, it is also rude to intrude into their private business. As the historian Peter Gay observes, granting privacy to others reflects “a capacity to respect people with ideas and ideals at odds with one’s own; in short, a liberality of temper.”<sup>84</sup> We might not like what some people may do in private, but we respect their freedom to do it so long as it remains out of the public eye. Too much judgment by others about us can lead to an oppressive amount of social control. The psychiatrist Arnold Modell notes that for many people, private space might even be central to “psychic survival.”<sup>85</sup> Most of us desire a limited realm where we have a reprieve from the judgment of others, which otherwise might become suffocating.

Even when people are not transgressing norms or engaging in deviant behavior, they may still desire privacy. People want privacy even for their mundane daily activities. Without privacy, people might experience significant unease at everything they do, constantly wondering how others might interpret their actions. Innocent behavior might appear suspicious out of context.

### **The Land of Second Chances**

Another reason why people ought to be able to conceal private information is to enable them to recover from past mistakes and misconduct. Most of us have disgraceful moments in our past. We have done many things we might have regretted. In childhood we may have acted with great immaturity, been cruel to others, or done things that make us ashamed. There is a value in allowing individuals the opportunity to hide these past indiscretions in their skeleton closet.

America is the “land of second chances,” the saying goes. As the legal historian Lawrence Friedman puts it: “American society is and has been a society of

extreme mobility, in every sense of the word: social, economic, geographical. Mobility has meant freedom; mobility has been an American value. People often moved from place to place; they shed an old life like a snake molting its skin. They took on new lives and new identities. They went from rags to riches, from log cabins to the White House. American culture and law put enormous emphasis on second chances.<sup>86</sup>

We grow and change throughout our lives. According to the philosopher John Dewey, the individual is not “something complete, perfect, finished, an organized whole of parts united by the impress of a comprehensive form,” but is “something moving, changing, discrete, and above all initiating instead of final.”<sup>87</sup> A person is a life process from cradle to corpse. At any given moment, we are seeing just a snapshot in time, a slice of this lifelong process. As the playwright and author Friedrich Dürrenmatt eloquently wrote: “What one commonly called one’s self was merely a collective term for all the selves gathered up in the past, a great heap of selves perpetually growing under the constant rain of selves drifting down through the present from the future, an accumulation of shreds of experience and memory, comparable to a mound of leaves that grows higher and higher under a steady drift of other falling leaves.”<sup>88</sup>

Protection against disclosure permits room to change, to define oneself and one’s future without becoming a “prisoner of [one’s] recorded past.”<sup>89</sup> Society has a tendency to tie people too tightly to the past and to typecast people in particular roles. The human personality is dynamic, yet accepting the complete implications of this fact can be difficult.

But in several circumstances, people find it important to know about the checkered pasts of others. For example, people may not want to risk trusting an individual with a criminal past because recidivism rates are quite high—many ex-convicts commit crimes again.<sup>90</sup> Society benefits, however, when people can rehabilitate themselves and start new, more productive lives. We have a long-standing commitment to providing opportunities for rehabilitation in this country. Indeed, some of this country’s colonial settlers were convicted criminals, transported here for their crimes.<sup>91</sup> Most states have laws that expunge juvenile criminal records when the juvenile reaches adulthood.<sup>92</sup> As one court observed, “an unexpunged juvenile record may create a lifelong handicap because of the stigma it carries.”<sup>93</sup> Our criminal justice system engages in frequent and extensive efforts to rehabilitate, such as prison education programs and boot camps. We must balance the value of rehabilitation against the value of the disclosure of the information.

### GOSSIP THEN, GOSSIP NOW

In the past, gossip occurred backstage; it was fleeting and localized. The anthropologist Sally Engle Merry observes: “Gossip flourishes in close-knit, highly connected social networks but atrophies in loose-knit, unconnected ones.”<sup>94</sup> Before the rise of the blogosphere, Jessica Cutler’s gossip about her sexual experiences with Robert would probably have remained within her small circle of friends. But today details about people’s private lives are increasingly migrating to the Internet. Jessica’s blog was read by hundreds of thousands of people—perhaps millions. It is becoming harder and harder for people to escape their pasts. For example, in her book *Slut! Growing Up Female with a Bad Reputation*, Leora Tanenbaum relates that she suffered intense emotional damage because of being labeled a “slut” in high school. She finally escaped in college: “I sliced off the experience from my memory when I went away to college, where no one knew.” “While a girl can almost instantly acquire a ‘slut’ reputation as a result of one well-placed rumor,” Tanenbaum observes, “it takes months, if not years, for the reputation to evaporate, if it does at all.”<sup>95</sup> With the Internet, however, escaping a bad reputation can be impossible. Moreover, traditional gossip occurs in a context, among people who know the person being gossiped about. But the Internet strips away that context, and this can make gossip even more pernicious.

The Internet is transforming the nature and effects of gossip. It is making gossip more permanent and widespread, but less discriminating in the appropriateness of audience. Suppose, for example, John and Jane Doe are a married couple. John Doe is having an affair with another woman. If Jane Doe’s brother were to tell her about the affair, many people would think that the brother acted appropriately. As the law professor Anita Allen observes, people are accountable to others even in their private lives.<sup>96</sup> Many of us believe that Jane should know about John’s affair. But that doesn’t make it acceptable for him to write about John’s affair on his blog. Audience matters. The information is of concern to Jane, but not to the entire world. Another consideration is the purpose of the disclosure. Disclosures made for spite, or to shame others, or simply to entertain, should not be treated the same as disclosures made to educate or inform. When we determine whether gossip is good or not, we must look at the who, what, and why of it. We should ask: Who is making the disclosure? Is the disclosure made to the appropriate audience? Is the purpose behind the disclosure one we should encourage or discourage? The problem with Internet gossip is that it can so readily be untethered from its context.

I believe that it is imperative that we do something to address the developments inherent in the marriage of traditional gossip to the technology of the Internet. But what? How do we protect privacy in a world where information is flowing ever more freely, where anybody can publish information to a worldwide audience? I will explore this issue later. First, though, let us turn to the practice of shaming—which, like gossip, has taken on new and troubling dimensions in the digital age.

## Notes

### CHAPTER 3. GOSSIP AND THE VIRTUES OF KNOWING LESS

1. April Witt, *Blog Interrupted*, Wash. Post Magazine, Aug. 15, 2004, at W12.
2. *Id.*
3. Jessica Cutler's blog, *Washingtonienne*, has been taken off the Internet. Archived copies of the blog are still available online. The blog *Wonkette* has posted an archived copy. See *The Lost Washingtonienne*, *Wonkette*, <http://www.wonkette.com/archives/the-lost-washingtonienne-wonkette-exclusive-etc-etc-004162.php>. The blog is also reproduced in its entirety in Robert's legal complaint against Jessica.
4. Julie Bosman, *First With the Scoop, if Not the Truth*, N.Y. Times, Apr. 18, 2004.
5. *Wonkette* is located at <http://www.wonkette.com>. At the time *Wonkette* linked to Jessica's blog, it had fewer daily visitors. Although it was already quite popular at the time, its coverage of Jessica's blog helped to catapult *Wonkette* to higher levels of popularity.
6. Witt, *Blog Interrupted*, *supra*.
7. Quoted in *Wonkette*, *Washingtonienne: Eliminated by Process*, May 21, 2004, <http://www.wonkette.com/archives/washingtonienne-eliminated-by-process-009677.php>.
8. Witt, *Blog Interrupted*, *supra*.
9. Ana Marie Cox, *Washingtonienne Speaks!! Wonkette Exclusive!! Must Credit Wonkette!! The Washingtonienne Interview!!* *Wonkette*, May 21, 2004, <http://www.wonkette.com/politics/media/washingtonienne-speaks-wonkette-exclusive-must-credit-wonkette-the-washingtonienne-interview-9693.php>.
10. <http://www.jessicacutleronline.com/>.
11. Witt, *Blog Interrupted*, *supra*.
12. Ana Marie Cox, *Biography Page*, Ana Marie Cox Website, <http://www.anamariemarie.com/bio.html>.
13. In the interest of full disclosure, I have provided advice to Robert's counsel subsequent to his filing of the lawsuit. Before providing advice, I made it clear that I would continue to publicly express my opinions about the case regardless of whether they were critical of Robert's positions in the case. The opinions expressed about the case in this book are solely my own.

14. *Internal Affairs: Playboy.com Poses Questions to the Infamous Washington, D.C., Sex Blogger*, Playboy.com, Aug. 31, 2004, [http://www.playboy.com/commerce/email/cyberclub/o8\\_31\\_04/story/dcintern\\_pop.html](http://www.playboy.com/commerce/email/cyberclub/o8_31_04/story/dcintern_pop.html).
15. Witt, *Blog Interrupted*, *supra*.
16. Orin Kerr, *When Professors Read Pseudonymous Student Blogs*, Volokh Conspiracy, Apr. 26, 2005, [http://volokh.com/archives/archive\\_2005\\_04\\_24-2005\\_04\\_30.shtml#1114540880](http://volokh.com/archives/archive_2005_04_24-2005_04_30.shtml#1114540880).
17. Anonymous George Washington University Law School Student, *Hoist By My Own Petard*, Idlegrasshopper, Apr. 20, 2005, <http://idlegrasshopper.blogspot.com/2005/04/hoist-by-my-own-petard.html>.
18. *Former Boston Herald Columnist Fired from Teaching Job*, Associated Press, July 19, 2005.
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21. Scott Jaschik, *The Phantom Professor*, Inside Higher Education, May 11, 2005, <http://www.insidehighered.com/news/2005/05/11/phantom>.
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23. Colleen McCain Nelson, *SMU Blogger Unmasked, Unemployed*, Dallas Morning News, May 15, 2005.
24. *Id.*
25. Jaschik, *Phantom Professor*, *supra*.
26. *Id.*
27. *Id.*
28. *Id.*
29. Daniel J. Solove, *The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure*, 53 Duke L.J. 967, 1005–6 (2003); *see also* David Bauder, *Identifying Rape Victims Troubles Media*, Ft. Lauderdale Sun-Sentinel, Aug. 3, 2002, at 3A.
30. Fernanda B. Viegas, *Bloggers' Expectations of Privacy and Accountability: An Initial Survey*, Journal of Computer-Mediated Communication, vol. 10, issue 3 (2005), <http://jcmc.Indiana.edu/vol10/issue3/viegas.html>.
31. Quoted in *id.*
32. Eric Hsu, *Students' Web Sites Put Schools in Quandary*, Bergen (N.J.) Record, July 24, 2005.
33. H. J. Cummins, *When Blogs and Jobs Collide*, Minneapolis Star Tribune, Aug. 14, 2005.
34. Bob Sullivan, *Kids, Blogs, and Too Much Information*, MSNBC.com, Apr. 29, 2005, <http://www.msnbc.msn.com/id/7668788/>.
35. MALCOLM GLADWELL, *THE TIPPING POINT* 7, 9, 30–33, 35, 58–59 (2000).
36. *Id.* at 25.
37. ALBERT-LÁSZLÓ BARABÁSI, *LINKED* 31, 34 (2002).
38. Aaron Ben Ze'ev, *The Vindication of Gossip*, in *GOOD GOSSIP* 1, 22, 24 (Robert F. Goodman & Aaron Ben-Ze'ev, eds. 1994)
39. JÖRG R. BERGMANN, *DISCREET INDISCRETIONS: THE SOCIAL ORGANIZATION OF GOSSIP* 21–22 (1993).

40. KEITH DEVLIN, *THE MATH GENE* 255 (2000).
41. Sally Engle Merry, *Rethinking Gossip and Scandal*, in *REPUTATION: STUDIES IN THE VOLUNTARY ELICITATION OF GOOD CONDUCT* 47 (Daniel B. Klein, ed. 1997).
42. Nicholas Emler, *Gossip, Reputation, and Social Adaptation*, in *GOOD GOSSIP*, *supra*, at 117, 135.
43. KAREN J. BRISON, *JUST TALK: GOSSIP, MEETINGS, AND POWER IN A PAPUA NEW GUINEA VILLAGE II* (1992). When gossip occurs behind people's backs, rumors often "circulate unchecked" and are hard to combat if "diffuse and hidden." *Id.* at 12.
44. Diane L. Zimmerman, *Requiem for a Heavyweight: A Farewell to Warren and Brandeis's Privacy Tort*, 68 *Cornell L. Rev.* 291, 333–34 (1983).
45. This argument is frequently raised in support of outing gays. See, e.g., Kathleen Guzman, *About Outing: Public Discourse, Private Lives*, 73 *Wash. U. L.Q.* 1531, 1568 (1995) ("Outers offer up the victim as a 'sacrificial lamb' to portray themselves as purifying redeemers, able to solve the problems of discrimination."). Outing gays, the argument goes, will help alter society's perception of gays by demonstrating that mainstream people or role models are gay. For more background on outing, see John P. Elwood, Note, *Outing, Privacy, and the First Amendment*, 102 *Yale L.J.* 747, 776 (1992) (arguing that outing to establish a person as a gay role model should be outweighed by privacy rights, whereas outing to point out the hypocrisy of public officials should be permitted).
46. BRISON, *JUST TALK*, *supra*, at 112.
47. MARTIN HEIDEGGER, *BEING AND TIME* 158 (Joan Stambaugh, trans. 1996) (originally published in 1953).
48. PATRICIA MEYER SPACKS, *GOSSIP* 4 (1985).
49. BRISON, *JUST TALK*, *supra*, at 12. Professor Cynthia Kierner observes that gossiping was a way to "jockey for social position" in postrevolutionary America. CYNTHIA A. KIERNER, *SCANDAL AT BIZARRE: RUMOR AND REPUTATION IN JEFFERSON'S AMERICA* 64 (2004).
50. Robert Post, *The Legal Regulation of Gossip: Backyard Chatter and the Mass Media*, in *GOOD GOSSIP*, *supra*, at 65, 65.
51. Paul M. Schwartz, *Internet Privacy and the State*, 32 *Conn. L. Rev.* 815, 843 (2000).
52. *Id.* at 842–43.
53. RICHARD A. POSNER, *THE ECONOMICS OF JUSTICE* 232–34 (1981).
54. STEVEN L. NOCK, *THE COSTS OF PRIVACY: SURVEILLANCE AND REPUTATION IN AMERICA II–12* (1993).
55. *Id.* at 124.
56. JEFFREY ROSEN, *THE UNWANTED GAZE: THE DESTRUCTION OF PRIVACY IN AMERICA* 8 (2000); see also Lawrence Lessig, *Privacy and Attention Span*, 89 *Geo. L.J.* 2063, 2065 (2001).
57. KAREL ČAPEK, *The Last Judgment*, in *TALES FROM TWO POCKETS* 159–60 (Norma Comrada, trans. 1994) (1929).
58. WILLIAM H. GASS, *FICTION AND THE FIGURES OF LIFE* 45 (1979); see also Georg Simmel, *The Sociology of Secrecy and of Secret Societies*, 11 *American Journal of Sociology* 441, 442 (1906) (we "never can absolutely know another" but form our conception of others based on "fragments").

59. WILLIAM JAMES, *THE PRINCIPLES OF PSYCHOLOGY* 282 (Harvard U. Press edition 1983) (originally published in 1890). Virginia Woolf embraced this pluralistic conception of selfhood in her novel *Orlando*: “Biography is considered complete if it merely accounts for six or seven selves, whereas a person may well have as many as a thousand.” VIRGINIA WOOLF, *ORLANDO: A BIOGRAPHY* (1928).
60. ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* (1959); see also ALAN WESTIN, *PRIVACY AND FREEDOM* 33 (1967).
61. Roy F. Baumeister, *An Overview*, in *THE SELF IN SOCIAL PSYCHOLOGY* 1, 8 (Roy F. Baumeister, ed. 1999).
62. Quoted in Philip Roth, *In Defense of Intimacy: Milan Kundera’s Private Lives*, *Village Voice*, June 26, 1984, at 42.
63. JOSEPH BENSMAN & ROBERT LILIENFELD, *BETWEEN PUBLIC AND PRIVATE: LOST BOUNDARIES OF THE SELF* 174 (1979).
64. *Id.* at 49.
65. MILAN KUNDERA, *TESTAMENTS BETRAYED* 260–61 (1995).
66. HANNAH ARENDT, *THE HUMAN CONDITION* 22–24 (1958).
67. ARNOLD M. LUDWIG, *HOW DO WE KNOW WHO WE ARE? A BIOGRAPHY OF THE SELF* 49 (1997).
68. ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 96 (1963).
69. *Id.*
70. LUDWIG, *HOW DO WE KNOW WHO WE ARE?* *supra*, at 117.
71. THOMAS NAGEL, *CONCEALMENT AND EXPOSURE & OTHER ESSAYS* 7 (2002).
72. GOFFMAN, *STIGMA*, *supra*, at 3, 7–9, 30.
73. SUSAN SONTAG, *ILLNESS AS METAPHOR AND AIDS AND ITS METAPHORS* 38, 143, 6, 58 (1990).
74. Stan Karas, *Privacy, Identity, Databases*, 52 *Am. U. L. Rev.* 393, 427 (2002).
75. Paul M. Schwartz, *Privacy and the Economics of Personal Health Care Information*, 76 *Tex. L. Rev.* 1, 29 (1997).
76. See, e.g., Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 *Harv. L. Rev.* 1003 (1995) (reviewing market-based theories of racial discrimination).
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80. AMITAI ETZIONI, *THE LIMITS OF PRIVACY* 196 (1999).
81. FRED CATE, *PRIVACY IN THE INFORMATION AGE* 30 (1997).
82. Robert C. Post, *The Social Foundations of Privacy: Community and Self in the Common Law Tort*, 77 *Calif. L. Rev.* 957, 968 (1989).
83. Robert C. Post, *Three Concepts of Privacy*, 89 *Geo. L.J.* 2087, 2092 (2001).
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85. ARNOLD H. MODELL, *THE PRIVATE SELF* 95 (1993).

86. Lawrence M. Friedman, *Name Robbers: Privacy, Blackmail, and Assorted Matters in Legal History*, 30 Hofstra L. Rev. 1093, 1112 (2002).
87. JOHN DEWEY, EXPERIENCE AND NATURE 167 (Jo Ann Boydston, ed. 1987) (originally published in 1925); see also JOHN DEWEY, HUMAN NATURE AND CONDUCT 97 (Jo Ann Boydston, ed. 1988) (originally published in 1922) (discussing “the difference between a self taken as something already made and a self still making through action”). As the psychologist Carl Schneider notes, protection against disclosure is similar to the skin of a fruit or the shell of an egg. CARL D. SCHNEIDER, SHAME, EXPOSURE, AND PRIVACY 37 (1992); see also David L. Bazelon, *Probing Privacy*, 12 Gonz. L. Rev. 587, 590 (1977) (“[P]rivacy shelters the emerging individual’s thoughts from public disclosure and control so that the fear of being watched, exposed, ridiculed, or penalized does not crush the seeds of independent thinking before they can mature.”).
88. FRIEDRICH DÜRRENMATT, THE ASSIGNMENT 24 (Joel Agee, trans., Random House 1988).
89. SECRETARY’S ADVISORY COMMITTEE ON AUTOMATED PERSONAL DATA SYSTEMS, U.S. DEP’T OF HEALTH, EDUCATION & WELFARE, RECORDS, COMPUTERS, AND THE RIGHTS OF CITIZENS (1973), <http://aspe.os.dhhs.gov/datacncl/1973privacy/tocprefacemembers.htm>.
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91. Sarah Bilder, *The Struggle over Immigration: Indentured Servants, Slaves, and Articles of Commerce*, 61 Mo. L. Rev. 743, 756–57 (1996).
92. See Funk, *Hiding Criminal Pasts*, at 288 (suggesting that state laws permitting the expunging of juvenile criminal records are “grounded on a belief that juveniles will outgrow their reckless youthful behavior”).
93. *People v. Price*, 431 N.W.2d 524, 526 (Mich. Ct. App. 1988).
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95. LEORA TANENBAUM, SLUT! GROWING UP FEMALE WITH A BAD REPUTATION xvi, xv (2000).
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